Filed 1/14/19 In re K.F. CA4/3

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re K.F., a Person Coming Under the Juvenile Court Law.	
ORANGE COUNTY SOCIAL SERVICES AGENCY, Plaintiff and Respondent, v. E.H. et al., Defendants and Respondents; K.F. et al., Appellants.	G056351 (Super. Ct. No. DP020495-002) O P I N I O N

Appeal from an order of the Superior Court of Orange County, Gary L. Moorhead, Judge. Affirmed.

William D. Caldwell, under appointment by the Court of Appeal, for Appellant Minor.

The Law Office of Cara Bender and Cara Bender for Appellant De Facto Parent K.S.

John L. Dodd, under appointment by the Court of Appeal, for Defendant and Respondent E.H.

Jacques Alexander Love, under appointment by the Court of Appeal, for Defendant and Respondent A.F.

Leon J. Page, County Counsel, and Karen L. Christensen, Deputy County Counsel, for Plaintiff and Respondent.

* * *

K.F. (child), the child of defendants and respondents E.H. (mother) and A.F. (father), appeals[1] from the grant of mother's petition under Welfare and Institutions Code section 388 (all further statutory references are to this code unless otherwise stated) to provide reunification services to her after they had initially been denied. Child argues the court abused its discretion in granting the petition because mother did not prove the required changed circumstances or that it is in child's best interest for services to be provided to her.

Mother and father contend there was no abuse of discretion because mother proved changed circumstances and services to her were in child's best interest. Mother also maintains neither child nor the de facto parent have standing to appeal. Plaintiff and respondent Orange County Social Services Agency (SSA) filed a letter brief supporting mother and father.

We conclude child has standing to appeal and the court did not abuse its discretion in granting the petition. We affirm the order.

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[1] K.S., child's de facto parent, filed a joinder in the appeal, adopting his arguments and authority.

FACTS AND PROCEDURAL HISTORY

In July 2017 then six-year-old child was taken into custody after police found methamphetamine and drug paraphernalia in the van where child was living with mother and father. Mother and father were arrested. Child previously had been detained at birth, having tested positive for methamphetamine.[2] He was ultimately returned to mother and father. After the removal at issue, child was placed with now de facto parent, K.S., a family friend with whom he had been placed during his previous dependency.

After mother and father were released from jail in August 2017, and prior to the dispositional hearing, mother availed herself of services including treatment for substance abuse, drug testing, and counseling. All drugs tests were negative except one for a prescription painkiller and two for alcohol.

Visitation was originally ordered to be monitored, six hours per week. Visits went well. Father was eventually allowed unmonitored visitation.

After child was first taken into custody he expressed a desire to return to living with mother and father. He suffered nightmares most nights when first living with de facto parent but they subsequently subsided. Child reported he was "enjoying his placement" but he was concerned he would be adopted.

At the combined jurisdictional and dispositional hearing in October 2017 the court sustained the petition against mother and father under section 300, subdivisions (b), failure to protect, and (j), abuse of sibling. The court denied services to mother under section 361.5, subdivision (b)(10) [services terminated failure to reunify with siblings], (11) [parental rights over sibling terminated], and (13) [history of extensive use of drugs or alcohol and resistance or failure to comply with prior court-ordered treatment plan].

Despite being denied services, mother voluntarily participated in programs. In January 2018, when mother was "1/2 way through the 3rd phase of the [perinatal]

[2] Parental rights over two of mother's children from prior relationships were terminated; both tested positive for methamphetamine when born.

program," she filed her first section 388 petition seeking services. The court denied the petition, finding she had not shown a sufficient change of circumstances, but the court congratulated mother on eight months of sobriety, noting she was "making great strides."

The March 2018 status report stated mother was in the last phase of the perinatal program and participating in random drug testing and had no missed tests or positive results. Both mother's perinatal counselor and substance abuse counselors reported mother was doing well in her programs, "express[ing] an eagerness and motivation to maintain ongoing sobriety." She was also engaging in "positive and meaningful" visitation, six hours per week. Child wanted to live with mother and father.

In April 2018 mother filed the instant second section 388 petition seeking services. She was in phase 4 of a perinatal treatment program and scheduled to graduate in three weeks. She also had been taking SSA and perinatal program random drug tests two to three times per week and had tested clean. She was participating in therapy at least once a week. In addition, she had visited child consistently throughout the course of the case. Child was "extremely bonded" to both mother and father, who were not homeless and were living in a hotel. They had received first month's rent from Mercy House, which would also make partial rent payments for the next two months.

A May status report noted child "really missed his mom and dad" and was afraid he would be adopted and unable to see them anymore. His nightmares had come back and he sometimes woke up crying. He wanted to spend more time with mother.

An addendum to the May status report reiterated mother had consistently participated in drug testing and had no positive or missed tests. Additionally, she had "regular and meaningful visitation" with child. Child had asked for an increase in the allowed six hours per week. The addendum also explained mother and father had moved into an apartment, which the social worker described as "neat, clean and free of clutter."

The addendum spelled out SSA's support for mother's second section 388 petition seeking services. Acknowledging mother's first request had been denied, the

report stated it was in child's best interest for mother to have services. This was based on father's "great progress" in his case plan plus the fact parents intended to stay together. In addition, it noted mother had been "actively participating in services on her own and demonstrating that she is able to safely care for the child through her positive progress."

By the time of the hearing on the second section 388 petition for services mother and father had signed a rental agreement for an apartment and mother had completed her perinatal program, which included a parenting section.

The court granted the second section 388 petition for services, finding there was evidence of changed circumstances and that services for mother were in the best interest of child. It found the existence of the rental agreement was new evidence. Further, mother had completed a perinatal program. Although it did not show mother was "clean and sober," it was "an indication that she is well on the road to changing." The court considered this evidence in combination with the fact father had complied with his case plan and SSA was recommending he receive another six months of services and also SSA's recommendation that extending services to mother was in the best interest of child.

At the same hearing the court conducted its six-month review. It found a substantial probability child could be returned to a mother and father in six months. It continued services to father for another six months and set a 12-month review hearing.

DISCUSSION

1. Standing of Child and De Facto Parent to Appeal the Order

Only an aggrieved party may appeal. (Code Civ. Proc., § 902.) An appellant's injury "must be immediate and substantial, and not nominal or remote." (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 948.) In a dependency matter, standing to appeal is liberally construed with doubts resolved in favor of standing. (*In re K.C.* (2011) 52 Cal.4th 231, 236.)

Mother contends child was not aggrieved and therefore has no standing to appeal the order; she argues we should dismiss his appeal. She claims the order does not injure child or require him to do anything. Child counters he is aggrieved because the order might prolong his dependency and delay his final custody status. These circumstances are sufficient to show child is aggrieved. (See *In re N.M.* (2003) 108 Cal.App.4th 845, 838, superseded by statute on another ground as stated in *In re T.W.* (2013) 214 Cal.App.4th 1154, 1158 [child appealed from order continuing services].)

Mother also argues de facto parent is not aggrieved. De facto parents have limited rights to participate in dependency proceedings. (*In re B.G.* (1974) 11 Cal.3d 679, 692-693.) These include rights "to participate in disposition, review, and permanent plan hearings" (*In re Jody R.* (1990) 218 Cal.App.3d 1615, 1626, fn. omitted) but not the right to custody, visitation, or reunification services (*id*. at p. 1628). Mother did not cite any case specifically addressing this issue and we could find none; de facto parent did not address the issue. But we need not decide this issue because de facto parent merely filed a joinder and adopted child's argument, and we have concluded child has standing.

2. Section 388 Petition – General Principles and Standard of Review

Under section 388, subdivision (a) a parent may petition for modification of an order. The parent must prove by a preponderance of the evidence there are either changed circumstances or new evidence and the modification is in the child's best interest. (*In re D.B.* (2013) 217 Cal.App.4th 1080, 1089; § 388, subd. (a).) "In determining whether the petition makes the necessary showing, the court may consider the entire factual and procedural history of the case." (*In re J.P.* (2014) 229 Cal.App.4th 108, 127.)

We review the grant of a section 388 petition for abuse of discretion. (*In re Alayah J*. (2017) 9 Cal.App.5th 469, 478.) We affirm the order unless it "'"exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial

court.””” (*In re Brittany K.* (2005) 127 Cal.App.4th 1497, 1505.) The trial court’s decision will not be disturbed unless the court “‘“has exceeded the limits of legal discretion by making an arbitrary, capricious, or patently absurd determination.”’” (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318.) We do not reweigh the evidence or redetermine credibility. (*In re R.T.* (2017) 3 Cal.5th 622, 633.)

3. Order Offering Services to Mother

Child contends the court abused its discretion because there was insufficient evidence of changed circumstances. Relying on case law that states merely “changing” circumstances are insufficient (*In re Casey D.* (1999) 70 Cal.App.4th 38, 47), he points to the court’s statement mother was “well on the road to changing,” arguing this “suggests” mother’s circumstances had not changed. We disagree.

The court specifically found mother’s circumstances had changed, including that she had completed a perinatal program and had found permanent housing. Child argues this does not “require” changing the order denying services. Perhaps so. But it certainly *allows* a modification of the order.

Further, the court ordered an additional six months of services to father. So granting services to mother did not result in a delay in selecting a permanent placement for child. (See *In re Casey D.* (1999) 70 Cal.App.4th 38, 47.)

We are not persuaded by child’s best interests argument. He points to the original case plan, which stated a goal of child reunifying with father. He also notes the original order denying services to mother shows that in some instances reunification is not in child’s best interest. But obviously, that finding was not a final ruling. Otherwise there would be no need for section 388.

Child also contends the existence of a strong bond between him and mother is not new evidence or a change in circumstance because the bond has always been there. But it is evidence to support the finding providing services to mother is in child’s best interest. (*In re Amber M.* (2002) 203 Cal.App.4th 681, 685.)

Without argument or citation of authority in support, child asserts mother failed to explain why her current substance abuse treatment differs from previous treatments that have failed. We could consider the argument forfeited on that basis (*Benach v. County of Los Angeles* (2007) 149 Cal.App.4th 836, 852), but in any event we are not persuaded mother has such a burden.

In short, the evidence supports the court's changed circumstances findings, and child has not shown the court exceeded its authority by making an arbitrary, capricious, or absurd decision when it allowed mother to have reunification services.

DISPOSITION

The order is affirmed.

THOMPSON, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

FYBEL, J.